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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Deployment of Wireline Services Offering )  
Advanced Telecommunications Capability )  
)

CC Docket No. 98-147

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REPLY COMMENTS OF THE  
COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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## SUMMARY

The basis of the ILECs' opposition to mandatory line sharing can be distilled down to the following: a desire to dominate the market for the provision of advanced services by maintaining monopolistic control over the existing local loop. To that end, the ILECs have desperately, yet unconvincingly, argued that 1) the Commission does not have the authority to mandate line sharing, 2) the Commission rejected line sharing in the *Local Competition Order*, 3) line sharing will discourage innovation and deployment of advanced services, and 4) the complexity of the operational issues make line sharing too difficult to implement. Indeed, as set forth in detail below, CIX and other commenters have made clear that 1) the Commission has authority to order mandatory line sharing as a "capability" of the local loop, 2) the Commission, in its *Local Competition Order*, established that a competitive carrier has the *right* to obtain an *entire* loop if it so desires, but did not preclude a competitive carrier from obtaining less than an entire loop, 3) line sharing will result in an immediate increase in the deployment of advanced services to the American public, leading to the introduction of new and innovative products and services, and 4) the operational issues that will arise under line sharing arrangements have already been successfully overcome in the provision of various services over the ILECs' lines, including long distance service and ADSL service obtained by ISPs pursuant to the ILECs' wholesale service tariffs and offered to end users.

In summary, line sharing will eliminate the significant cost disadvantage that advance service only service providers face by having utilize stand alone lines. A reduction in the cost of providing competitive advanced services will enable more new carriers to enter the advanced services market and will lead to a rapid deployment of broadband services to the American public. Line sharing is technically feasible and there are no legal or operational impediments that should keep the Commission from adopting rules ordering mandatory line sharing.

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**REPLY COMMENTS OF THE  
COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association (“CIX”)<sup>1</sup>, by and through undersigned counsel, hereby submits its Reply Comments on the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking in the above-referenced proceeding concerning long-term standards and practices for spectrum compatibility and line sharing.<sup>2</sup> The Commission has tentatively concluded that without line sharing “competitive LECs will be hampered in their ability to compete in providing advanced services to end users.”<sup>3</sup> Such competition will ensure faster and more far-reaching deployment of advanced services to the public. Competition also will create downward pressure on the cost of high-speed, switched, broadband telecommunications services for residential customers.

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<sup>1</sup> The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

<sup>2</sup> See, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 99-48 (re. March 31, 1999) (“FNPRM”)

<sup>3</sup> FNPRM at ¶ 99.

**A. THE ILECs OPPOSE LINE SHARING BECAUSE THEY SEEK TO EXPLOIT  
THEIR MONOPOLY OVER THE EXISTING LOCAL LOOP TO DOMINATE  
THE ADVANCED SERVICES MARKET**

In an attempt to preserve and exploit their monopoly over the existing local loop, the ILECs have twisted the words, intent, and spirit of the Communications Act, the Telecommunications Act of 1996, and previous Commission rulings. ILEC arguments opposing mandatory line sharing can be summarized as follows: 1) the Commission does not have the authority to mandate line sharing because spectrum is not a network element, but if it is deemed a network element, line sharing does not satisfy the “necessary” or “impair” standards of Section 251(d)(2)<sup>4</sup>; 2) the Commission “rejected” line sharing arrangements in its *Local Competition Order*<sup>5</sup>; 3) line sharing will eliminate CLECs’ incentive to innovate and will discourage ILECs from deploying advanced services<sup>6</sup>; and 4) the complexity of the operational issues make line sharing too difficult to implement.<sup>7</sup>

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<sup>4</sup> See, e.g., Ameritech Comments at 2; Bell Atlantic Comments at 7; GTE Comments at 19; Rural Telephone Coalition Comments at 8; SBC Comments at 16; and US West Comments at 11.

<sup>5</sup> See, e.g., Bell Atlantic Comments at 7; BellSouth Comments at 2; GTE Comments at 27; SBC Comments at 18; and US West Comments at 161.

<sup>6</sup> See, e.g., Bell Atlantic Comments at 4; BellSouth Comments at 14; GTE Comments at 25; SBC Comments at 18; and Rural Telephone Coalition at 4.

<sup>7</sup> See, e.g., Ameritech Comments at 9; Bell Atlantic Comments at 10; BellSouth Comments at 16; GTE Comments at 29; Rural Telephone Coalition Comments at 15; SBC Comments at 23; and US West Comments at 25.

**I. The Commission Has Authority To Order Line Sharing**

A network element is defined as “a facility or equipment used in the provision of telecommunications service” and includes “features, functions, and capabilities that are provided by means of such facility or equipment . . . used in the transmission . . . or other provision of telecommunications service.”<sup>8</sup> The Commission has the requisite authority to order mandatory line sharing because line sharing is a “capability” of the local loop. In its *Local Competition Order*, the Commission adopted 47 C.F.R. Section 51.319, which lists the local loop as a “network element” that the ILECs are required to make available to requesting carriers on an unbundled basis.<sup>9</sup> The Supreme Court has vacated and remanded Section 51.319 for further proceedings.<sup>10</sup> Specifically, the Court ordered the Commission to “determine on a rational basis which network elements must be made available taking into account the objectives of the Act and giving some substance to the ‘necessary’ and ‘impair’ requirements.”<sup>11</sup> On April 16, 1999, the Commission released a Second Further Notice of Proposed Rulemaking in which it sought comment on the 1) identification of unbundled network elements on a nationwide basis, 2) interpretation of the “necessary” and “impair” standards, and 3) criteria the Commission and the states should consider in determining whether a network element is subject to unbundling

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<sup>8</sup> 47 U.S.C.S. 153(29).

<sup>9</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, 11 FCC Rcd 15499 (rel. August 8, 1996). (“Local Competition Order”)

<sup>10</sup> AT&T Corp., et al. v. Iowa Utilities Bd. et al., 119 S.Ct. 721 (1999).

<sup>11</sup> Id. at 736.

obligations.<sup>12</sup> Very convincing arguments were made that, as the *ultimate* bottleneck to the end user, the local loop meets the “necessary” standard under Section 251(d)(2)(A) and the “impair” standard of Section 251(d)(2)(B). For instance, commenting parties perceptively noted that Congress itself concluded that the local loop was sufficiently essential to opening local markets that it identified the local loop on the 47 U.S.C. § 271 checklist was enacted to promote and develop competition in the local telecommunications markets.<sup>13</sup> It is nearly inconceivable how the local loop could be included on the Section 271 checklist to promote and develop competition in the local telecommunications market, but not meet the “necessary” and “impair” standards of Section 251(d)(2).

In light of the Commission’s instant line sharing proposal and sensing that the Commission is likely to conclude that the local loop satisfies the “necessary” and “impair” standards, the ILECs have attempted to “muddy” the definition of the local loop. The

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<sup>12</sup> See, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-70 (rel. April 16, 1999). (“*UNE Remand Proceeding*”)

<sup>13</sup> See, e.g., Prism Communications Services, Inc. comments at 17 – 19.

ILECs have uniformly mischaracterized the Commission's mandatory line sharing proposal as mandatory "spectrum unbundling." By characterizing line sharing as "spectrum unbundling," the ILECs hope to convince the Commission (and ultimately the courts) that the local loop and the spectrum used to transmit telecommunications services over the local loop are separate and apart. In turn, the ILECs argue, the spectrum itself must independently meet the definition of a network element. However, the local loop and the spectrum used to transmit telecommunications services over that loop are not independent of each other. Line sharing is merely a "capability" of the local loop. This "capability" enables advanced service providers to offer telecommunications service over the same line that the ILECs employ to provide voice services. In essence, mandatory line sharing is more so a clarification of the ILECs' responsibility to make the local loop (*and all of its capabilities*) available to requesting carriers on an unbundled basis, rather than the introduction of a new network element as the ILECs contend.

The Commission has acknowledged that its ultimate decision concerning line sharing will be subject to the outcome of the *UNE Remand Proceeding*.<sup>14</sup> CIX agrees with the Commission's conclusion that it nonetheless is currently an appropriate time in which to develop a record on the issue of line sharing. To the extent the Commission redefines the local loop as a network element pursuant to the *UNE Remand Proceeding*, the Commission can take appropriate measures to revise certain conclusions reached in the instant proceeding.

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<sup>14</sup>

FNPRM at ¶ 95.



## II. The Commission Did Not Reject Line Sharing in the Local Competition Order

Several ILECs have argued that in the *Local Competition Order* the Commission rejected line sharing as an appropriate way to provide competitive telecommunications services. The ILECs point to paragraph 385 of the *Local Competition Order* as evidence of the Commission's decision to prohibit line sharing. However, the *Local Competition Order* did not address line sharing and did not preclude a competitive carrier from obtaining less than an entire loop where that competitive carrier only requires the loop's line sharing capability in order to provide data services only. Quite to the contrary, the Commission's holding ensured that a competing carrier that wanted an entire loop on an exclusive basis could not be *forced* by the ILEC to accept only a portion of the loop. The Commission noted that "[g]iving competing providers exclusive control over the network facilities dedicated to particular end users provides such carriers the maximum flexibility to offer new services to such end users."<sup>15</sup> For competitive carriers seeking to provide voice, data or other new services, acquiring an entire loop on an exclusive basis would likely provide that carrier with the "maximum flexibility" that it requires in order to offer such services to its end users. Indeed, CIX supports the Commission's conclusion that a competitive carrier should be entitled to acquire an entire loop on an exclusive basis if it so desires. This of course does not mean, as the ILECs have craftily argued, that a competitive carrier is *required* to obtain the entire loop.

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<sup>15</sup>

*Local Competition Order* at ¶ 385.

**III. Line Sharing Will Not Eliminate CLECs' Incentive To Innovate Nor Will It Discourage ILECs From Deploying Advanced Services**

The ILECs argue that line sharing will eliminate CLECs' incentive to innovate and will discourage ILECs from deploying advanced services. Neither of these results are likely to occur. In fact, the savings achieved through line sharing will ultimately enable CLECs to invest in more facilities and offer new and innovative service offerings. As the Commission noted,

[L]ine sharing holds the possibility of enabling new entrants to focus solely on the advanced services market without having to acquire the resources or expertise to provide other types of telecommunications services, such as analog voice service. Shared line access could also remove any cost disadvantage that an advanced services only provider might face if it had to provide advanced services over a stand alone line.<sup>16</sup>

Competitive providers' ability to focus solely on the provision of advanced services and to "enter the market in a manner that enables them to incur no greater costs than the incumbent LEC or its affiliates . . ." will allow such providers to offer new and innovative services to the mass market, and especially to niche markets that require unique products and services.

Moreover, as stated by Covad Communications Company, "the availability of line sharing will only *increase* the incentives of CLECs to collocate and deploy even more DSLAMs in ILEC central offices,"<sup>17</sup> thus resulting in greater investment in our nation's

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<sup>16</sup> FNPRM at ¶ 93.

<sup>17</sup> Covad Comments at 41.

telecommunications infrastructure. Of particular importance, the “availability of line sharing will make the deployment of competitive interoffice fiber transport facilities to . . . outlying residential and rural areas more attractive” to competitive providers.<sup>18</sup> Indeed, encouraging the timely deployment of advanced services to all Americans is a mandate of Section 706 of the 1996 Act. Mandatory line sharing would certainly advance the Commission’s efforts to ensure that advanced services are available to all Americans, and especially Americans living in rural areas.

The argument that mandatory line sharing will discourage ILECs from deploying advanced services does not make sense. Competitive providers in line sharing arrangements will be responsible for paying for a portion of the cost of the ILEC-owned lines on which they operate. Thus, under line sharing, the ILEC would not be forced to recover the entire cost of the line by itself. In fact, one could conclude that as more carriers gain access and pay for portions of the line through line sharing arrangements, the ILECs’ costs of operating and maintaining that line should actually go *down*. Moreover, line sharing fees paid by CLECs would be yet another revenue stream that the ILECs would presumably welcome. It has become all too clear that the true issue is not about the ILECs’ supposed inability to recover the cost of their lines under line sharing arrangements, but the issue is really about the ILECs’ desire to thwart the development

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<sup>18</sup>

Id.

of competition in the provision of advanced services. CIX finds it extremely difficult to believe that the ILECs will sit idly by while its competitors roll out and solidify their market dominance over the provision of these new and expectedly lucrative advanced services offerings. CIX trusts that the ILECs' true objectives are as clear to the Commission as they are to the competitive providers that currently are forced to offer their services at a significant cost disadvantage *vis a vi* the ILECs.

**IV. The Operational Issues That Will Arise Out of Line Sharing Arrangements Are Not Insurmountable**

The ILECs argue that the operational issues associated with line sharing make such arrangements nearly infeasible. As CIX and others noted in their comments, the operational issues that the ILECs raise, namely billing, maintenance and repair issues are far from insurmountable. Indeed, the ILECs faced and successfully dealt with similar issues in the early development of today's competitive long distance market.<sup>19</sup> More recently, as Covad noted, the ILECs resolved the same billing, maintenance and repair issues with the respect to the provision of ADSL service to their ISP affiliate or to ISP resellers pursuant to federal access tariffs.<sup>20</sup> In

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<sup>19</sup> See, e.g., Rhythms Netconnections Comments at 11.

<sup>20</sup> Covad Comments at 7.

the ADSL context, “*each time* a customer [i.e., an ISP] purchases an ILEC’s ADSL service, the line is shared between the ILEC’s regulated POTS service on the below-4khz frequencies and the deregulated Internet access service provided on the higher frequencies.”<sup>21</sup> Because the end user is receiving different services from two providers over the same line – voice from the ILEC and ADSL from the ISP -- operational issues arise that must be dealt with by the ILEC and the ISP. As Covad points out, Bell Atlantic has been particularly successfully in overcoming the operational issues faced under the line sharing-like arrangements it has with its customers that obtain ADSL service under Bell Atlantic’s Volume and Term Discount program.<sup>22</sup> While the operational issues introduced by line sharing arrangements will not be totally insignificant, they are hardly insurmountable and should in no way prevent the Commission from ordering mandatory line sharing.

## **B. CONCLUSION**

Commenters in this proceeding can generally be divided into two groups: 1) those entities that have a monopoly or near monopoly over the local loop and seek to maintain that monopoly in an effort to dominate the future deliverance of advanced services to the American public (i.e. ILECs) and 2) those entities that seek to enter the advanced services market on a

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<sup>21</sup> Id. (Emphasis original.)

<sup>22</sup> Id. at 8 –10.

competitive basis, but are currently faced with the virtually cost prohibitive requirement of having to serve end users over a stand-alone line (i.e., CLECs and ISPs). Despite ILEC contentions, mandatory line sharing is clearly in the public interest and should be ordered by the Commission. Indeed, the Commission has already acknowledged, and CIX agrees, that there are numerous public benefits that can be achieved as a result of line sharing, including: rapid deployment of advanced services to the public, development of competition in the advanced services market, consumer choice, and an efficient use of the telecommunications network.<sup>23</sup> Further, the Commission has concluded and the ILECs have conceded that line sharing is technically feasible. Nonetheless, fearing the imminent competition that will result from line sharing, the ILECs desperately argue that mandatory line sharing would not be legal or operationally feasible. CIX and other commenters, however, have made clear that the Commission does in fact have the authority to order mandatory line sharing and that the operational issues introduced by line sharing can be overcome.

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<sup>23</sup>

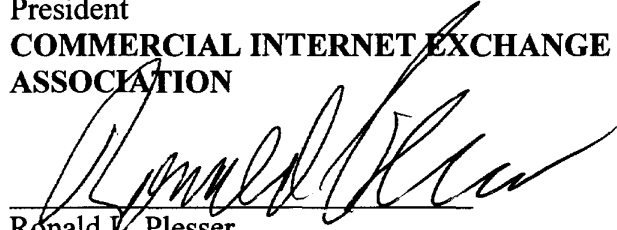
*See*, FNPR at ¶ 96 (**widespread deployment of advanced services**: “competitors would offer advanced services to markets, such as the residential market, where loop costs make a stand alone data service uneconomic”; **competition in the provision of advanced services**: “line sharing holds the possibility of enabling more providers to enter the advanced services market”; **consumer choice**: “line sharing should promote consumer choice”; and **efficient use of the telecommunications network**: “line sharing will enable . . . customers to keep their analog voice service with their local telephone company, while a competitive LEC provides high-speed digital services over the same line.”).

For all of the foregoing reasons, the Commercial Internet eXchange Association respectfully requests that the Commission adopt rules requiring line sharing.

Respectfully submitted,

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I, Jane L. Hall, a secretary at the law firm of Piper & Marbury L.L.P., hereby certify that a true and correct copy of the Reply Comments of The Commercial Internet Exchange Association was sent via first class, postage prepaid mail to the following individuals, this 22<sup>nd</sup> day of July, 1999.

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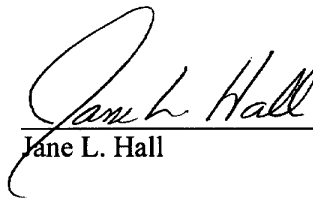
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